

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

MRS. GREEN'S OF BRIARCLIFF MANOR, INC.¹

Employer

- and -

Case No. 2-RC-23001

LOCAL 888, UNITED FOOD AND COMMERCIAL WORKERS

Petitioner

DECISION AND ORDER

Mrs. Green's of Briarcliff Manor, Inc. ("the Employer") is engaged in the sale of natural and organic products at eleven locations in the New York area. Local 888, United Food and Commercial Workers ("Petitioner") filed a petition among all regular full-time and part-time department managers, but excluding all other employees, including store managers, assistant store managers, office clericals, guards professionals and supervisors as defined by the Act.

Upon a petition filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Based upon the entire record in this matter² and in accordance with the discussion above, I conclude and find as follows:

1. The Hearing Officer's rulings are free from prejudicial error and hereby are affirmed.

2. The parties stipulated and I find that the Employer is a New York corporation with an office and place of business located at 97 North State Road, Briarcliff Manor, New York, is

¹ The name of the Employer was corrected at the outset of the hearing.

² The briefs filed by the parties have been duly considered.

engaged in the sale of organic and natural foods, food supplements and health and beauty aids. Annually in the course and conduct of its business operations, the Employer derives gross revenues in excess of \$500,000, and purchases goods and receives goods valued in excess of \$5,000, from suppliers located outside the State of New York.

Accordingly, based upon the stipulation of the parties, I find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated and I find that Petitioner, Local 888, United Food and Commercial Workers is a labor organization within the meaning of Section 2(5) of the Act.³

4. A question affecting commerce does not exist concerning the representation of certain employees of the Employer within the meaning of Sections 9(c) (1) and 2(6) and (7) of the Act.

5. Petitioner seeks an election among department managers. The Employer contends that the petition should be dismissed because the department managers are supervisors under the Act. I have considered the evidence and the arguments presented by the parties on this issue. For the reasons set forth more fully below, I find that the department managers are supervisory and the petition should be dismissed. To provide a context for my discussion, I will first provide an overview of the Employer's operations. Then, I will present the facts and reasoning that support my conclusion on this issue.

I. RELEVANT FACTUAL BACKGROUND

A. Employer Supervisory Structure and Operations

The Employer is a natural foods store which is owned and operated by Harold and June Hochberger. The operations component of the business is overseen by regional manager Paul Ryan, who reports directly to the owners regarding store conditions, merchandise and personnel issues at all eleven facilities. At the Briarcliff Manor location, which opened on May 13, 2004, Tsewang Sherpalama is the store manager and Kelley Orr is the assistant store manager. Further, this location has six managers in the following departments: grocery, deli, produce, dairy, supplements, and health and beauty aids.

The grocery department is staffed by department manager Guillermo Heisner and three employees. Orr estimated that Heisner spends about 75% to 80% of his time in the grocery aisles doing the work alongside his helpers.⁴ Heisner works Monday through Saturday and he testified that in addition to the work he performs in the grocery aisle with his assistants, he assigns work and oversees the department eight hours a day.

From the store's opening until about July 2005, Erin Baugher served as the deli manager. According to Orr, Baugher spent about 50% of her time doing the actual deli work and about 20% of her time entering invoices in the database system. According to the

³ I note that since the filing of the petition, Petitioner has withdrawn from the AFL-CIO and as such that designation has been removed from the Petitioner's name.

⁴ Orr maintained that the department managers observe and evaluate the quality of the helper's work because they also perform the department work.

Employer's training manual dated March 2000,⁵ it is the responsibility of the deli manager to monitor all activity in the deli department. "Managers are to assist, not only delegate. Employees will be encouraged to give their all when their managers work alongside them." Baugher is responsible for ordering, scheduling vacations, training, creating a cleaning schedule and creating a schedule of specials. Further, the deli manager should intercede if necessary when customer complaints cannot be resolved by the deli server.

In late July 2005, Ramon Martinez was transferred from the Eastchester facility to replace Baugher.⁶ Approximately six employees report to Martinez who testified that he places orders, receives the food and oversees the helpers to make sure that work is properly performed.

The produce manager from the store's opening to July 6, 2005 was Pedro Ballinas. Ballinas testified that he was in charge of purchasing, receiving, invoicing and stocking. He was responsible for the manner in which the produce was displayed. Orr estimated that Ballinas spent about 75% to 80% of his time working with primarily two helpers.⁷ On about July 18, 2005, Bonifacio Cruz Ramirez was transferred from the Eastchester store as the replacement produce manager and he testified that three helpers report to him.⁸ He described the same job duties as outlined above by Ballinas.

The dairy manager is Boanerge (Barney) Burgos and one employee, Renzo Antola, reports to him. Together, they unload deliveries and either stock the shelves or refrigerate the products.⁹ According to Orr, Burgos spends about 50% to 75% of his time performing the work in the department. He spends the other part of his day entering invoices into the database system. While the owners determine pricing, Burgos has discretion to choose and order whatever products he believes will sell. He estimated that he deals with about 1,000 different products.

The supplements manager is Catriona Lappell. She described her duties as placing orders, helping customers, setting up demonstrations of the products, and directing the work of Dina Washington - the only employee who reports to Lappell. Orr claimed that Lappell spends about 80% of her day stocking and selling items on the sales floor.

The health and beauty aid manager is Solange Labonne. Samantha Kelly - the only employee who reports to Labonne - started working in this department in about July 2005. Labonne's duties appear to be similar to Lappell's in that she orders, enters invoices, stocks, assists customer and directs Kelly's work.

⁵ The Training Manual only applies to the deli department. Sheralama testified that other documents describing grocery responsibilities and cashier responsibilities exist but he could not recall their contents. These documents were not introduced in evidence.

⁶ The parties stipulated that Martinez has the same authority that Baugher held while she was employed.

⁷ One part-time evening helper, Winson Laurent, interacts with Ballinas for a few hours every Tuesday. Beyond that, their schedules do not overlap.

⁸ The parties stipulated that Ramirez has the same authority that Ballinas held while he was employed.

⁹ On Saturday, Antola works alone and unloads the incoming deliveries himself. Further, Antola testified that when Burgos is not working, he reviews the orders and inputs the invoices.

Sherpalama, at times referred to as Sherpa throughout the record, is the store manager and is in charge of the daily operations of the store. He also drafts the work schedule for the employees. It appears that the frozen food employee, eleven (mostly part-time) cashiers and the part-time porter report directly to Sherpalama, Orr and Heisner whenever he is acting as the manager in charge. All of the other employees report to their respective department managers.

The grocery manager, Guillermo Heisner, is one of three “key holders” at the facility. He has the authority, along with Sherpalama and Orr, to issue to customers voids and refunds at the register. In the event that Sherpalama, Orr and Heisner are unavailable, a key holder from another store is transferred to the Briarcliff location. The other department managers do not substitute for them. Further, Heisner regularly substitutes for Sherpalama and Orr when they are not available at the store or on vacation. Heisner opens and closes the facility and is “the manager in charge” of the store about once a week.

The supervisory structure from the owners to the department managers is hierarchical but somewhat informal. While Ryan generally determines what products to buy, the department managers can dispute Ryan’s merchandising decisions by speaking directly with the owners. As an example, produce manager Pedro Ballinas complained directly to Harold Hochberger regarding the poor quality of produce, whereupon, that vendor was discontinued for the Briarcliff store, notwithstanding Ryan’s recommendation to continue buying from the vendor.¹⁰ Ryan makes weekly store visits during which he inspects the merchandise with Sherpalama and suggests improvements. He typically spends about one hour at the store and primarily interacts with Sherpalama and Orr.

Sherpalama and Orr do not punch a clock, but all of the other employees, including both helpers and department managers, are required to punch in and out daily. Vacation and sick days are earned according to a formula based on hours worked and the benefits are the same for the helpers and the department managers. The department managers are eligible for a quarterly bonus based on a percentage increase in sales for that quarter in their respective departments.¹¹

B. Department Managers’ Authority and Responsibilities

C.

According to Sherpalama, the department managers have the authority to effectively recommend hiring, disciplining, transferring, firing, scheduling, training and pay raises for the employees in their respective departments. On a daily basis, the department managers oversee the regular activities of the employees. They are also responsible for tracking inventory and entering invoices into the computer database system. Further, the department managers attend monthly management meetings with Sherpalama and Orr.¹²

¹⁰ While Ryan maintained that there are several instances where department managers had his decisions reversed by discussing an issue directly with the owners, he could not specifically recall other examples.

¹¹ No record evidence was adduced regarding differences the wage rates among the department managers or between the department managers and the employees. Pedro Ballinas and possibly his replacement Bonifacio Cruz Ramirez appear to be the only department managers who are salaried. Everyone else is an hourly employee. No evidence was adduced regarding the bonus amount.

¹² No record evidence was adduced regarding the substance of these meetings.

Orr maintained that the department managers have the same authority regardless of the significantly different volume of sales between the departments. She contended that while the managers of the smaller departments may not have exercised their authority, they nevertheless have the authority to recommend all of the actions cited herein.

Hiring

The record establishes that on April 2, 2005, Sherpalama sent an e-mail to Harold Hochberger seeking advice regarding “issues raised in the meeting by employees.” It appears that at this meeting, both department managers and employees requested additional help and additional hours. Sherpalama testified that at the meeting, the dairy manager, Boanerge Burgos, and the produce manager, Pedro Ballinas, recommended additional hiring in both departments. He added that cashier Phyllis Limberti, an undisputed employee, also recommended the hiring of more cashiers and Sherpalama agreed. In that regard, his e-mail indicates that Sherpalama hired one cashier and intended to hire more cashiers after obtaining more applicants. In regard to the recommendations of Burgos and Ballinas, Sherpalama only agreed to one additional hire in each department instead of two.

Apart from the April 2nd meeting, Sherpalama testified that he hired employees in response to the department managers’ requests for more help at other times as well. He specifically stated that Winson Laurent and John Rendon were hired because Ballinas informed him that he needed more help. Sherpalama said that while the decision to hire was based on Ballinas’ request for more help, Ballinas was not involved in the determination of who to hire. Ballinas testified that he met Laurent and Rendon for the first time after their hire, when Sherpalama introduced them.¹³

Sherpalama noted other instances where the department managers effectively recommended hiring. As an example, grocery manager Guillermo Heisner recommended the hire of Betzy Lorenzo, who had previously worked at one of the other Mrs. Green’s locations. Sherpalama approved her hire based on Heisner’s recommendation. According to Heisner, however, Lorenzo called Orr and inquired about job openings. Orr asked Heisner if he wanted Lorenzo in his department and he said yes. While it appears that Heisner could have rejected the additional help, the record is unclear as to whether Sherpalama would have hired Lorenzo for a position in another department.

Further, Sherpalama maintained that deli manager Erin Baugher recommended hiring Nicholas Bellet. However, according to Orr’s testimony, it appears that Baugher merely “took” the applications of two people and may have reviewed their prior experience with them. It further appears that Sherpalama interviewed Bellet and hired him the next day. Sherpalama eventually also hired another applicant. The record does not more fully develop Baugher’s participation, if any, in the hiring process. No applications, memos, or other documentary evidence concerning new hires were submitted in the record. One deli employee, Mirta Marin, was hired by Sherpalama solely on the basis of her application. Operations manager Paul Ryan directly hired another deli employee, Elizabeth Ozzello, without any input from the department manager.

¹³ Orr testified that Ballinas directly hired Roberto Zumba when he worked as produce manager at the Mt. Kisco location.

Both Ballinas and Burgos testified that their participation in the hiring process was no different than any other employee in the store. According to Ballinas, anyone working in the store can recommend friends or family for a job and Sherpalama will interview them. As an example, grocery department employee, Lina Naranjo, recommended hiring two of her friends and Sherpalama hired them. Burgos effectively recommended two family members for hire and Sherpalama hired them on his recommendation alone. Ballinas recommended that the produce manager at the Eastchester location, Mr. Santiago, be hired as his helper when the store opened, but everyone else in the produce department was hired without Ballinas' input.¹⁴

Transfers

The record demonstrates that employees are transferred between departments at the request of the department managers. The final decisions on interdepartmental transfers are made by Sherpalama in conjunction with Paul Ryan, the operations manager. As an example, on two separate occasions, Heisner requested that cashiers Jessica Berros and Lina Naranjo transfer to the grocery department and Sherpalama approved both requests. Heisner also requested the transfer of a porter/cashier named Craig Nadler to the grocery department which Sherpalama approved. The record is unclear as to whether a vacancy or departmental sales growth precipitated these transfer requests. No record evidence was adduced regarding whether the employees considered the grocery department more desirable or whether the transfer necessitated a change in hours or an increase in pay.

Further, Sherpalama asserted that he transferred Oscar Hernandez from the grocery department to the produce department at the request of both department managers. Heisner was dissatisfied with Hernandez' work and Ballinas requested the switch. According to Ballinas, however, Sherpalama knew that his department was short staffed and in response to Heisner's dissatisfaction, Hernandez was transferred to the produce department by Sherpalama without prior consultation with him.

Burgos testified that he requested another helper due to rising sales in his department. In response, Sherpalama transferred an employee to the dairy department. He did not request a specific employee and does not know the criteria that Sherpalama used to determine which employee would be transferred into the dairy department.

Similarly, Lappell testified that she spoke to Sherpalama and Ryan because she needed help in her department. She specifically requested that employee Dina Washington be transferred to her department on a full-time basis and this request was granted. Sherpalama also provided hearsay evidence that health and beauty aid manager Solange Labonne spoke to Ryan and requested that a cashier be transferred to her department which he granted.

Disciplinary Actions

The record demonstrates that Heisner issued three written warning notices. Heisner issued a warning notice dated October 22, 2004, to a deli department employee for leaving the building without permission. About one month later, Heisner issued a warning notice to a

¹⁴ In that regard, Ballinas further claimed that Ryan subsequently transferred Santiago to the Larchmont location over Ballinas' objection.

cashier for leaving his post without permission. Most recently, Heisner issued a warning notice dated May 27, 2005, to a deli employee for leaving her station without a manager's permission and for allowing a visitor in an area reserved for employees without permission. It appears that Heisner issued these warning notices as the "manager in charge" or in his capacity as the "key holder in charge" because Sherpalama and Orr were not working. Orr testified that she is not aware of any other department managers who actually wrote warning notices.

Further, the record demonstrates that produce department employee Winson Laurent was issued a written warning dated September 17, 2004, which was signed by Orr. While Orr claimed that Ballinas insisted that she issue the written warning to Laurent, Ballinas contended that he merely reported performance issues. He claimed that he never saw the warning notice when it was issued and that Orr had made an independent determination to discipline Laurent. According to Ballinas, he complained to Orr that Laurent was not properly performing despite his instructions. He and Orr walked around his department and he showed her the things that had not been done properly.¹⁵ When Laurent arrived at work, Orr and Ballinas approached him and explained that he was not doing the work as specified by Ryan. Laurent responded that he was very busy cleaning up carts in the parking lot at the request of other managers. At this, Orr informed Ballinas that she had decided a written warning to Laurent was appropriate. In contrast, Laurent and Orr testified that after Ballinas verbally reprimanded him, Orr presented him with a warning notice regarding Laurent's failure to follow Ballinas' instructions.

In addition, Kelly Orr testified that Ballinas recommended that employee John Denobell be transferred to a different store because Denobell refused to follow Ballinas' directions and that this recommendation was followed. She conferred with Sherpalama and Ryan who both spoke to Denobell regarding his performance issues. When the situation did not improve, they acted on Ballinas' recommendation to transfer Denobell to another location. Ballinas testified that he requested that Denobell be transferred from his department or fired many times before Sherpalama took any action. Further, Ballinas confirmed that Sherpalama observed first-hand incidents of Denobell's foul language and insubordination.

Over in the dairy department, Burgos testified that he complained to Sherpalama about the poor work performance of two employees. In each case, the store manager told Burgos to allow more time for the employee's work to improve. After Burgos continued to complain, Sherpalama took action. In the first instance, the employee was discharged after about one week on the job. In the second instance, after Burgos complained to Sherpalama on three occasions within a month about continued poor performance, the employee was finally discharged. In describing the reasons for the recommendation to terminate this employee, Burgos testified that he was responsible for the work in his department and if upper management observed that the department was inadequate, they would hold him responsible. He also testified that he did not think that he had the authority to issue a written warning. It appears that Sherpalama transferred this employee from cashier to the grocery department and then to the dairy department before deciding to terminate him.

¹⁵ Ballinas worked from 7:00 am to 3:30 pm, Monday through Friday. Laurent started at 5:30 pm on weekdays, except Tuesday. Presumably, he reports to Sherpalama or Orr when Ballinas is not present.

Directs and Assigns

Heisner maintained that the assignment process is constant because the shelves in the grocery must be full and the aisles must be cleared of boxes as soon as possible. He directs employees to assist each other where more help is needed. He conceded, however, that after an employee is trained, much of the work is routine.

In the deli department, Baugher assigns work by telling employees to set the deli case, set the salad bar, do prep work, prepare the chickens or work the counter. The prep person is always the same but the other tasks could be rotated among employees.

Ballinas makes all of the display decisions for his department and he teaches employees how to display the products, like a “waterfall” of cantaloupes. He also directs one helper to unload the pallet and another helper to prep the greens and another helper to reset the floor. Ballinas maintained that Ryan has very strict and specific criteria regarding the manner in which produce is displayed and he is responsible for ensuring that Ryan’s requirements are met. With respect to daily direction, Ballinas testified that all the produce workers had significant industry experience so that his primary concern was adhering to Ryan’s directives. In that regard, Ballinas assigns work based on the helpers’ ability and availability.

Burgos directs the work of Renzo Antola by telling him what to put on the floor first and what to store in the walk-in freezer. His instructions vary from day to day because the deliveries are different every day. Burgos testified, however, that the assignments are “common sense stuff.” For example, if the milk is low, he tells Antola to restock it or if the refrigerator is messy, he tells Antola to clean it up. Burgos stated that Antola is an experienced worker who requires minimal direction. Significantly, Burgos admitted that when he assigns a task, he expects Antola to do it.

Orr described an example of the supplements manager Lappell directing Washington’s work. “She’ll say Nature’s Way is in the back...and I want you to do Solgar first because that’s the lowest.” Lappell testified that she uses her judgment in determining the priority of product placement.

Wage Increases

The Employer’s general policy regarding pay increases is that upon their annual review, every employee is eligible for a pay raise. However, if the department manager feels that the employee is doing an exceptional job, then they can recommend that person for a raise in advance of the annual review. In that regard, Orr cited the following instances: Baugher effectively recommended a pay increase for Elizabeth Ozzello; Ballinas effectively recommended a pay raise for Oscar Hernandez; and Lappell effectively recommended a pay raise for Dina Washington. It appears that Heisner spoke to the owners on behalf of Betzy Lorenzo who had received a raise but as a result of Heisner’s intervention, it was adjusted to the appropriate rate.

To the contrary, Burgos testified that he recommended Antola for a raise but Sheralpama denied it. Ballinas claimed that although he asked Sheralpama to give Hernandez a raise, the request was denied. Further, it appears that at the April 2 employee meeting, both

department managers and employees requested raises, some of which Sherpalama granted and others were referred to June Hochberger for consideration.

Time and Attendance

According to the Employer's training manual for the deli department, the deli manager is required to work a minimum of eight-hour shifts and therefore, they must obtain the store manager's approval if they need to leave early. It appears that this policy applies to all of the department managers.

Employees request schedule changes from the department manager which may be approved depending on staffing needs. In that regard, the Employer submitted the weekly schedule for the period from June 5th to June 11th which indicates that Baugher changed employees' schedules and later simply informed Sherpalama that she authorized the changes. Heisner testified that grocery department employees ask his permission to leave early which he decides without consulting Sherpalama. He also independently decides whether vacation requests will be granted. Lappell gave specific instances where she changed Washington's schedule to accommodate a dentist's appointment and a school examination schedule. Burgos testified that he recommended a schedule change to accommodate Antola which Sherpalama later approved. Only Ballinas testified that if an employee wanted a schedule change, Sherpalama handled it. Sherpalama is responsible for inputting the final weekly hours into the computerized time keeping system.

II. ANALYSIS

With respect to the Employer's claim that the department managers should be excluded from the unit because they are supervisory, Section 2(11) of the Act defines a supervisor as: any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off recall, promote, discharge, assign, reward or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the exercise of independent judgment.

It is well established that Section 2(11) of the Act must be read in the disjunctive and that an individual therefore need only possess one of these powers for there to be a finding that such status exists. *Concourse Village, Inc.*, 278 NLRB 12, 13 (1985). However, the grant of authority must encompass the use of independent judgment on behalf of management. *Hydro Conduit Corp.* 254 NLRB 433, 441 (1981). The party seeking to exclude an individual as a supervisor bears the burden of establishing that such status, in fact, exists. *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 712 (2001); *Quadrex Environmental Co.*, 308 NLRB 101 (1992); *Ohio Masonic Home, Inc.* 295 NLRB 390, 393 fn. 7 (1989). Mindful that a finding of a supervisory status removes an individual from the protection of the Act, the Board avoids attaching to Section 2(11) too broad a construction. *Adco Electric, Inc.*, 307 NLRB 1113, 1120 (1992), *enfd.* 6 F.3d 1110 (5th Cir. 1993). The Board has noted that, in enacting Section 2(11) of the Act, Congress stressed that only persons with "genuine management prerogatives" should be considered supervisors, as opposed to "straw bosses, leadmen and other minor supervisory employees." *Chicago Metallic Corp.*, 273 NLRB 1677 (1985) (citing Senate Rep. No. 105, 80th Cong., 1st Sess., 4 (1947)), *aff'd* in relevant part 794 F.2d 527 (9th Cir. 1986).

Thus, “whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia.” *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989).

The Supreme Court, in *NLRB v. Kentucky River Community Care*, supra(*Kentucky River*) held that an individual who responsibly directs other employees with independent judgment within the meaning of Section 2(11) must have sole or significant authority over the work unit. In that regard, the standard for responsible direction and independent judgment includes evidence that the alleged supervisor has been delegated substantial authority to ensure that a work unit achieves management's objectives and is thus “in charge.” Further, the evidence must establish that the purported supervisor is held accountable for the work of others. Finally, the evidence adduced must show that the individual exercises significant discretion and judgment in directing his or her work unit.

In the instant case, the record demonstrates that the department managers are “in charge” of their individual departments. While the department managers perform the same work as their helpers for a substantial period of their work day, it is also clear that they are vested with defined areas beyond that of their helpers. For example, the department managers are responsible for tracking the merchandise and obtaining credits from vendors. Accordingly, they are vested with the authority to achieve maximum profitability for their department. Further, they train new employees which requires extensive knowledge of the product line, especially in the supplements department. The department managers generally approve schedule changes for the helpers by balancing the employees’ request for time-off with the staffing needs of the department.

Further, while the evidence is somewhat ambiguous regarding whether the department managers effectively recommend hire, transfer, discipline or discharge, both of the department managers called by the Union testified that they are held responsible for the work performed in their department. In that regard, Ballinas reported the poor work performance of Laurent because he did not want to be reprimanded by Ryan for inadequacies in his department. Burgos testified that he expects employees to do the work that he directs them to do because Ryan holds him responsible for it. Even though much of the work is routine, the department managers exercise independent judgment in directing and assigning work based on the employees’ skills and availability. Moreover, when the helpers fail to perform, the department managers report to Sherpalama and Orr and request that the employee be removed from their department. When additional help is required, the department managers suggest to Sherpalama that employees be hired or transferred to their department. The record is clear that the requests for discipline or transfer and the request additional help is tied to their ultimate responsibility for the department’s work getting done.

The record as a whole demonstrates that department managers are in charge of their departments and the work load. They have responsibilities and duties that their helpers do not share. They assign work and train and assist the helpers in carrying out their work. In doing so, they ensure that the work is done properly and determine if additional help is required to complete the work. *Custom Bronze & Aluminum Corp.*, 197 NLRB 397 (1972).

In conclusion, based on the record evidence, I conclude that the evidence is sufficient to establish that the department managers are supervisors as defined by Section 2(11) of the Act.

Based on my finding that the department managers are supervisory employees, I shall dismiss the petition.

ORDER

IT IS HEREBY ORDERED, that the Petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by September 8, 2005.

Dated at New York, New York,
August 25, 2005

/s/ _____
David E. Leach III
Regional Director, Region 2
National Labor Relations Board
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New York, New York 10278